Jan. 21 1890 Fully.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1400~~. 1054

JOHN McGAHEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED DECEMBER 26, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1460.

JOHN McGAHEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 27, 1888.

1 VIRGINIA:

Pleas before the supreme court of appeals, held in the city of Richmond on Thursday, the 6th of December, 1888.

Be it remembered that heretofore, to wit, on the 30th July, 1888, came John McGahey, and filed his petition praying for a writ of error and supersedeas to a judgment rendered by the circuit court of the city of Alexandria on the 5th of June, 1888; which petition, with the transcript of the record accompanying the same, is as follows:

Petition.

In the Supreme Court of Appeals of Virginia, Richmond.

MCGAHEY *vs.* COMMONWEALTH.

To the honorable judges of the supreme court of appeals of Virginia:

Your petitioner, John McGahey, respectfully represents that he is aggrieved by a judgment pronounced against him by the circuit court of Alexandria city on the 5th day of June, 1888, in a cause wherein The Commonwealth of Virginia was plaintiff and your petitioner was defendant. Your petitioner presents herewith a transcript of the record of said judgment, which shows the following case:

Your petitioner owed the State of Virginia $12.60 as taxes for the years 1886 and 1887, for which he tendered her proper collecting officer her overdue tax-receivable coupons, which were refused. He was thereupon sued for the same in said court, and, upon a plea of tender, petitioner, after producing his evidence, prayed the court to instruct the jury that the acts of the Virginia Legislature denying its due effect to said evidence were repugnant to the Constitution of the United States; but the court refused to so instruct the jury, and, on the contrary, it instructed that said acts were valid. The court also instructed the jury that the act of the Virginia Legislature requiring him to produce the bonds from which said coupons were cut was not repugnant to said Constitution against petitioner's claim that it is repugnant to the same. In consequence of the court's said rulings the jury were compelled to find a verdict against your petitioner.

Petitioner complains of each ruling of said court denying him a right claimed under said Constitution as error, and he therefore prays for a writ of error and reversal of said judgment.

PETITIONER,
By Counsel.

2 I am respectfully of opinion that the judgment complained of in the foregoing petition is erroneous, and should be reversed.

WM. L. ROYALL,
Counsel Practising in the Supreme Court of Appeals of Virginia.

Writ of error awarded with supersedeas. Bond required in the penalty of $100, conditioned as the law directs.
July 30, 1888.

B. W. LACY.

To the clerk of the court of appeals at Richmond, Va.

Transcript of Record.

VIRGINIA:

COMMONWEALTH OF VIRGINIA, Plaintiff,

vs.

JOHN MCGAHEY, Def't.

Motion for judgment for taxes.

Pleas at the court-house of Alexandria city, before the circuit court of said city, June 5th, 1888.

Be it remembered that heretofore, to wit, on the 12th day of March, 1888, the defendant was served with the following notice, to wit:

In the Circuit Court of Alexandria, Virginia.

To John McGahey:

Take notice that on the 23d day of March, 1888, in accordance with the statutes in such cases made and provided, I shall move the circuit court of Alexandria city for a judgment against you in favor of the Commonwealth of Virginia for the sum of $12.60, with interest on $6.40, part thereof, from the 15th day of Dec., 1886, till paid, and on $6.20, the residue, from December 15, 1887, till paid, that being the sum due by you to the said Commonwealth of Virginia for taxes, together with the penalty thereon, in payment of which papers or instruments purporting to be coupons detached from bonds of the State of Virginia have been tendered and not accepted as payment, and which taxes have not been otherwise paid, due on certain real and personal property in the city of Alexandria, the said taxes being the same assessed according to law by the Commonwealth of Virginia for the years 1886 and 1887, upon the property aforesaid.

LEONARD MARBURY,
For the Commonwealth of Virginia.

3 On which is the following return:

Executed this 12th day of March, 1888, by serving a copy of the within notice on John McGahey.

W. H. SMITH, *S'g't.*

The following is a copy of said motion:

Motion to Quash Notice of Motion for Judgment.

ALEXANDRIA CITY, *ss:*

In the Circuit Court of Alexandria City, Virginia. May Term (Special), 1888.

COMMONWEALTH OF VIRGINIA *vs.* JOHN MCGAHEY.

On motion for judgment for taxes, &c.

Now comes the defendant, by his counsel, and moves the court to quash the notice of this motion and to dismiss all proceedings under it upon the ground that the act of Assembly, approved May 12, 1887, under which notice is given is repugnant to section ten of article one of the Constitution of the United States; which motion the court overruled, and the defendant then and there excepted.

ROYALL & BEACH,
For Defendant.

Thereupon the defendant filed his plea of tender, to which the plaintiff replied generally, and issue was joined.

The following is a copy of the plea of tender:

CITY OF ALEXANDRIA, *ss:*

For a plea in this behalf the defendant says that the plaintiff ought not to maintain its action, because he says that heretofore, viz., on the 1st day of December, 1886, and on the 1st day of December, 1887, when the taxes sued for became respectively due and payable, and prior to the commencement of this action in said city, he was willing and ready to pay and then and there tendered and offered to pay to the plaintiff tax-receivable coupons, then due and payable, cut from bonds issued by the plaintiff under the act of the General Assembly of Virginia, approved March 30th, 1871, entitled "An act to provide for the funding and payment of the public debt," together with lawful money of the United States, as follows, viz: For the said tax of $6.40, one (1) coupon, No. 23, cut from bond No. 5684, due January 1, 1883, for $3; one (1) coupon, No. 23, cut
4 from bond No. 4213, due January 1, 1883, for $3, and forty cents (40c.) lawful money of the United States.

And for the said tax of $6.20, one (1) coupon, No. 29, cut from bond No. 1048, due January 1, 1886, for $3; one (1) coupon, No. 28, cut from bond No. 2899, for $3, due July 1, 1885, and twenty cents (20c.) lawful money of the United States; to receive which the plaintiff then and there refused.

And the defendant further says that always from the times when the said taxes became respectively due and payable, hitherto he has

been ready and willing to pay, and is still *is* here ready and willing to pay to the plaintiff the said tax-receivable coupons and lawful money, and he now brings into court here said coupons and lawful money, ready to be paid to the plaintiff if it will accept the same; and this he is ready to verify; whereupon he prays judgment, &c.

ROYALL & BEACH,
For Defendant.

At a circuit court of the city of Alexandria, continued and held at the court-house of said city, on Tuesday, June 5th, 1888, the following judgment was rendered:

COMMONWEALTH OF VIRGINIA *vs.* JOHN MCGAHEY.

Motion for judgment for taxes.

This day came the attorney for the Commonwealth and the attorney for the defendant, and the defendant's counsel moved the court to quash the notice and dismiss all proceedings under it; which motions the court overruled, and the defendant excepted to the same. The defendant then filed a plea of tender, to which the Commonwealth replied generally; and thereupon came a jury, to wit, Stephen A. Green, F. A. Reed, John P. Rice. C. O. Pulman, J. T. Nalls, Thomas Hoy, J. T. Cox, Alex. McBurney, J. L. Dyson, Wm. Richards, M. German, and Emanuel Francis, who were elected, tried, and sworn in the manner prescribed by law; and, having heard the evidence and arguments of counsel, retired to their room to consult of their verdict, and after a time returned into court and presented the following verdict, to wit:

We, the jury, find the issue joined for the Commonwealth and assess its damages at thirteen dollars and ninety-six cents.

Therefore it is considered by the court that the Commonwealth of Virginia recover of the defendant the sum of thirteen dollars and ninety-six cents, with interest thereon from this date till paid, and such costs and fees as are allowed by law.

Be it remembered that on the trial of this cause the defendant excepted to certain rulings of the court and tendered two bills of exceptions, which he prayed might be signed, sealed, and enrolled; which is accordingly done.

5 *A Copy of the First Bill of Exceptions.*

Be it remembered that when this cause was called for trial the defendant moved the court to quash the notice of motion and dismiss the cause upon the ground that the act of the Assembly under which it is brought, approved May 12th, 1887, entitled "Chap. 185: An act to provide for the recovery by motions of taxes and certain debts due the Commonwealth," &c., is repugnant to section ten of article one of the Constitution of the United States; but the court overruled said motion and refused to quash said notice or to dismiss said cause;

to which action of the court the defendant excepted and tendered this his first bill of exceptions, which is signed, sealed, and enrolled.

JAMES KEITH. [SEAL.]

The following is a copy of the second bill of exceptions:

Circuit Court of the City of Alexandria. Special Term, 1888.

COMMONWEALTH OF VIRGINIA *vs.* JOHN MCGAHEY.

On motion for judgment for taxes.

Be it remembered that on the trial of issues joined in this court the Commonwealth, to maintain the issue on its part, proved that the defendant was duly assessed with and owed the taxes described in the notice, and rested.

Whereupon the defendant, to maintain the issue on his part, proved that when said taxes became respectively due and payable, and prior to the commencement of this action, he tendered in payment thereof to the proper collecting officer the coupons and lawful money described in and filed with his plea, which coupons on their face purported to have been originally attached to bonds issued by the State of Virginia under the act of the General Assembly, approved March 30, 1871, entitled "An act to provide for the payment and funding of the public debt," said coupons being then respectively due and payable and having each upon its face the following language: "Receivable at and after maturity in payment for all taxes, debts, and demands due the State," which said coupons and money said officer refused to receive.

The said coupons were then offered and received in evidence, and are in the form following, printed wholly from an engraved plate:

Receivable at and after maturity for all taxes, debts, and demands due the State.

The Commonwealth of Virginia will pay the bearer three dollars interest, due 1st January, 1883, on bond No. 4213.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

6 Coupon No. 23.

Receivable at and after maturity for all taxes, debts, and demands due the State.

The Commonwealth of Virginia will pay the bearer three dollars interest, due 1st January, 1883, on bond No. 5684.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

Coupon No. 23.

Receivable at and after maturity for all taxes, debts, and demands due the State.

The Commonwealth of Virginia will pay the bearer three dollars interest, due 1st July, 1885, on bond No. 2899.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

Coupon No. 28.

Receivable at and after maturity for all taxes, debts, and demands due the State.

The Commonwealth of Virginia will pay the bearer three dollars interest, 1st January, 1886, on bond No 1048.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

Coupon No. 29.

The defendant further proved that he never owned the bonds from which the coupons were cut, and knows nothing whatever in respect to their ownership; that the coupons, when purchased by him, were already detached from the bonds; that he bought them in the open market as genuine coupons, and without any reason to doubt their genuineness.

The defendant further proved that prior to Sept. 1, 1879, the State of Virginia had issued bonds of the kind and in the form authorized by said act to the amount of many millions of dollars, the coupons thereon being wholly printed from engraved plates and not signed manually.

He further proved that the denomination and serial numbers of said bonds were as follows:

$1000 bearer bond, act March 30, 1871, Nos. 1 to 18254, inclusive.
$1000 order bond, " " Nos. 1 to 4061, "
$500 bearer bond " " Nos. 1 to 2447, "
7 $500 order bond, " " Nos. 1 to 5000, "
$100 bearer bond, " " Nos. 1 to 7641, "
$100 order bond, " " Nos. 1 to 1314, "

$1000 bearer dollars bond, act March 28, 1879, Nos. 1 to 7564, inclusive.

£200 bearer sterling bond, act March 28, 1879, Nos. 1 to 374, inclusive.

$500 bearer dollars bond, act March 28, 1879, Nos. 1 to 569, inclusive.

£100 bearer sterling bond, act March 28, 1879, Nos. 1 to 23, inclusive.

$100 bearer dollars bond, act March 28, 1879, Nos. 1 to 1586, inclusive.

£20 bearer sterling bond, act March 28, 1879, Nos. 1 to 60, inclusive.

He offered and read in evidence to the jury senate document XV, Senate Journal 1881–'82, as follows:

Senate Document No. XV (*Senate Journal* 1881–'2).

COMMONWEALTH OF VIRGINIA,
SECOND AUDITORS OFFICE,
RICHMOND, *January 16th*, 1882.

To the Honorable John F. Lewis, president of the senate:

SIR: To the following resolutions of the senate—

"That the auditor of public accounts, second auditor, and treasurer are requested to furnish the senate the following information:

"First. Have they or either of them any reason to believe that there are in existence spurious, stolen, or forged bonds, purporting to have been issued under the act of March 28, 1879, entitled 'An act to provide a plan of settlement of the public debt?'

"Second. Have any such bonds been presented for exchange or transfer? And, if so, state the number, character, and denomination of such bonds and the names of the person or persons in possession of the same.

"Third. Have any coupons ever been presented for payment or actually paid which were spurious, stolen, or forged, and in the similitude of genuine coupons issued under the act aforesaid; if so, to state the amount of such coupons in the aggregate, their several denominations, when they matured, the numbers of the several bonds from which they have been detached and purported to represent, the semi-annual interest upon, and the names and residences of the persons from — they were received.

"Fourth. The same data and information respecting spurious and stolen or forged bonds and coupons, purporting to have been issued by authority of the act of March 30, 1871, entitled An act to provide for the funding and payment of the public debt and in similitude of genuine bonds and coupons issued thereunder"—

I have the honor to reply that I have no knowledge of any spurious or forged bonds or coupons issued or purporting to have been issued under either of the said acts.

As to any bonds or coupons that may have been stolen, I
8 have heard of none issued under the act of March 28, 1879, nor have I any knowledge of any issue under the act of March 30, 1871, except such information as may be contained in the report made to the Legislature March 30, 1874, by the joint committee to investigate the sinking fund, printed in House Document No. 6 for 1874, in which a deficiency of $15,939.89 of bonds and of $1,325.45 of interest is stated.

There was some double funding of bonds, as stated in the report made to the Legislature by the joint committee to examine the offices of the second auditor and treasurer, printed in House Document No. 9 for 1878–'79, but these were State bonds issued prior to the passage of this funding act of March 30, 1871.

Very respectfully,

H. H. DYSON,
Second Auditor.

He also offered and read in evidence House Document VIII, House Journal 1881–'82, as follows:

House Document No. VIII (*House Journal for* 1881–'82).

COMMONWEALTH OF VIRGINIA,
SECOND AUDITOR'S OFFICE,
RICHMOND, *January 9th*, 1882.

To the Hon. J. C. Fowler, speaker of the house of delegates:

SIR: In response to the following resolution of the house of delegates—

"That the first auditor, second auditor, and treasurer of Virginia be, and they are hereby, severally requested to furnish as soon as possible the following information:

"First. Whether any counterfeit or forged obligations of the State of Virginia have in any way come to their knowledge.

"Second. If so, of what kind were the said forged or counterfeit obligations, bonds, coupons, or certificates, their number, denomination, and amount, when and by whom presented, and what action, if any, has been taken in regard thereto"—

I have the honor to report that no counterfeit or forged obligations, bonds, coupons, or certificates of the State of Virginia have in any way come to my knowledge.

I am, respectfully, H. H. DYSON,
Second Auditor.

The defendant then offered to prove by the testimony of an expert witness that the coupons in issue were genuine coupons, but the court refused to receive such testimony or allow it to go to the jury because of the act of the General Assembly of Virginia, approved January 21, 1886, entitled "An act to amend and re-enact
9 section 39 of chapter 167, Code of 1873, in relation to rules, pleadings, and evidences, now incorporated into and constituting part of section 412, Code of 1887; to which ruling the defendant then and there excepted, on the ground that said act was repugnant to section 10, article 1, of the Constitution of the United States and to article XIV of the amendments thereto.

The defendant then rested, and thereupon the Commonwealth demanded of the defendant the production of the bond from which the coupons tendered purported to have been cut, with proof that said coupons were actually cut therefrom.

The defendant moved the court to overrule and disallow such demand on the ground that the act of the General Assembly, approved January 26, 1886, under which the demand was made, entitled An act to prescribe a rule of evidence in certain cases now incorporated into and constituting part of sec. 412, Code of 1887, is repugnant to section 10, article 1, of the Constitution of the United States and to article XIV of the amendments thereto, and is void; but the court ruled that said act, now section 412, Code of 1887, was valid, and sustained the demand; to which ruling the defendant (who was unable to comply with said demand) then and there excepted.

And this being all that was proved and offered in evidence on the trial by either party, the defendant thereupon prayed the court to instruct the jury as follows:

(1.) "The court instructs the jury that the production of the bonds from which the coupons in issue were cut, together with proof that the coupons were cut therefrom, is not necessary to establish the genuineness of the coupon; and the act of the General Assembly of Virginia, approved January 26, 1886, entitled 'An act to prescribe a rule of evidence in certain cases' (now part of section 412, Code of 1887), requiring such production and proof when demanded, is in conflict with and repugnant to section 10, article I, of the Constitution of the United States and to article XIV of the amendments thereto, and is void."

But the court refused this instruction and instructed the jury that the said act, now section 412, Code, 1887, was valid, and that such production of bond and proof when demanded was necessary to establish the genuineness of the coupons; to both of which rulings of the court the defendant then and there excepted.

The defendant further prayed the court to instruct the jury as follows:

"If the jury believe from the evidence that the State of Virginia issued her bonds with tax-receivable interest coupons thereto attached, which coupons were made payable to bearer and were printed from engraved plates and not signed manually by any officer of the State; and if they further believe that the defendant purchased the coupons filed with his plea of tender in the open market in good faith, as and for genuine coupons of said State, then they are instructed that the burden is upon the State to prove said coupons spurious, and that the act of her General Assembly, approved March 12, 1887, entitled An act to provide for the recovery by motion of taxes and certain debts due the Commonwealth, &c., which attempts to place upon the defendant the burden of proving them genuine, is repugnant to section 10, article 1, of the Constitution of the United States and is void."

But the court refused also this instruction, and to such refusal the defendant then and there excepted.

And the defendant now tendering this his second bill of exceptions, and praying that it may be signed, sealed, and enrolled and made a part of the record, it is ordered and done accordingly.

JAMES KEITH. [SEAL.]

I, John S. Beach, clerk of the circuit court of the city of Alexandria, Virginia, certify that the notice required by section 3457 of the Code of Virginia of 1887 was duly given in this case, and that the foregoing is such a record as was agreed to between counsel for the complainant and defendant.

Teste: JOHN S. BEACH, *Clerk.*

A copy.

Teste: GEO. K. TAYLOR, *C. C.*

11 And now at this day, to wit, at a supreme court of appeals held at the State court-house, in the city of Richmond, on Thursday, the 6th of December, 1888, came again as well the plaintiff in error, by his counsel, as the attorney general on behalf of the Commonwealth, and the court, having maturely considered the transcript of the record of the judgment aforesaid and the argument of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the said judgment. It is therefore considered that the same be affirmed, and that the Commonwealth recover against the plaintiff in error damages according to law, and also her costs by her about her defence herein expended, which is ordered to be certified to the said circuit court of the city of Alexandria.

The following is a copy of the opinion of the court:

12 *Opinion.*

McGAHEY *v.* THE COMMONWEALTH.

LACY, *J.*:

This is a writ of error to a judgment of the circuit court of the city of Alexandria, rendered on the 5th day of June, 1888. The case is as follows: The plaintiff in error was indebted to the Commonwealth of Virginia in the sum of $12.60 as taxes for the years 1886, 1887, for which he tendered alleged coupons of the State in payment, which were refused by the collector of taxes. He was thereupon sued by the Commonwealth for the amount of his said taxes
13 due the Commonwealth, and judgment was rendered for the Commonwealth, whereupon he applied to this court for a writ of error, which was allowed.

The proceeding was by motion and the defendant moved to quash the notice of said motion and dismiss all proceedings under it upon the ground that the act of Assembly, approved May 12th, 1887, under which the motion is instituted and the notice given is repugnant to section ten of article one of the Constitution of the United States, which motion the court overruled, and this ruling of the said
14 court is assigned as error. The act in question came under review in the Supreme Court of the United States in the case "*In re* Ayres," 123 U. S. R., 485. After citing the provisions of the act deemed material the Court said: "If a suit may be rightfully brought at all by the State to recover a judgment for taxes in such a case, certainly there is nothing in these provisions that violates any legal or contract right of the party sued;" and again: "The bringing of such actions is no breach of any contract subsisting between the complainants (complainants in the principal suit)
15 and the State of Virginia." Opinion of Mr. Justice Matthews, pp. 494, 495, 496.

There was therefore no error in this ruling of the circuit court. The second assignment of error is as to the refusal of the circuit court to allow the use of expert testimony to prove the genuineness

of the coupons tendered for the payment of the taxes sued on. The ruling of the circuit court upon this point was in accordance with the rule of evidence prescribed by law, to be found in the act of Assembly, approved January 21st, 1886, entitled "An act to amend and re-enact section 39 of chapter 167, Code 1873, in relation to rules, pleadings, and evidence."

16 We are of opinion that the claim set up by the plaintiff in error that this act is also contrary to the said tenth section of article one of the Constitution of the United States and article XIV of the amendments thereto cannot be sustained for reasons fully set forth in repeated decisions of this court. (Commonwealth *v.* Weller & Sons, 82 Va., 721; Commonwealth *v.* Booker, *id.*, 964; Newton *v.* Commonwealth, *id.*, 647; Cornwall *vs.* Commonwealth, *id.*, 646.) In the last case, which was a suit against the State, the court said:

17 "The cited clause of the United States Constitution has no application whatever to rules of evidence prescribed by the law-making power of this State to govern proceedings in her own courts. The said provision of the United States Constitution has no application to this case. This is a suit against the State of Virginia, and the plaintiff in error can only sue the State by her own consent, and when he avails of this consent he must pursue the remedy as it is provided by law. (Opinion of the court in Cornwall *v.* Commonwealth, *supra*.)

18 And in the case of the Commonwealth *v.* Weller & Sons, *supra*, this court said: "The Constitution of this State vests the legislative power of this Commonwealth in the General Assembly. The act of Assembly in question was an act to prescribe a rule of evidence in the courts of this State. The first article, section ten, of the United States Constitution provides, among other things, that no State shall pass any law impairing the obligation of contracts, but this provision has no application whatever to rules of evidence or procedure in the State courts. The same provision is found in the fifth article, fourteenth section, of the constitu-

19 tion of the State of Virginia."

The defendant in the case moved the court to require the production of the bonds from which the coupons were cut, which motion the court allowed, and the plaintiff again excepted. But in this action of the circuit court there was no error. It is in accordance with the law of the State and the ruling of this court in the case of the Commonwealth *vs.* Weller & Sons, *supra*. And the circuit court did not err in instructing the jury that the act in question

20 was constitutional and valid and that it was necessary to produce the bonds when demanded in order to establish the genuineness of the coupon.

Upon the whole case we are of opinion to affirm the said judgment of the circuit court of Alexandria city.

A true transcript.
Teste: GEO. K. TAYLOR, *C. C.*

Fee for transcript, $4.80.
Teste: GEO. K. TAYLOR, *C. C.*

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a
21 true transcript of the record and proceedings upon a writ of error lately pending in said court, in which John McGahey was plaintiff in error and The Commonwealth of Virginia was defendant in error.

In testimony whereof I hereto set my hand and annex the seal of said court this 21st day of December, 1888.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

GEO. K. TAYLOR, *Clk.*

22 To the honorable judges of the Supreme Court of the United States:

Your petitioner, John McGahey, respectfully represents that he was sued in the circuit court of Alexandria city by the Commonwealth of Virginia for taxes alleged to be due to her under the act approved May 12, 1887. When the case was called for trial he moved to quash the notice of motion, on the ground that the act of Assembly aforesaid was repugnant to section 10 of article 1 of the Constitution of the United States. The court overruled this motion, and the plaintiff in error excepted to its action. This action of the court, which was affirmed on appeal, is assigned for error. At the trial the defendant proved that when the taxes became due, and before the action was brought, he tendered in payment thereof coupons purporting to have been cut from bonds issued by the State of Virginia under her funding act of March 30, 1871, which were payable to bearer, were overdue, and purported to be receivable for all taxes due the State. He proved, further, that he never owned the bonds from which said coupons were cut, but that he had bought them in the open market as and for genuine coupons. He then offered to prove by the testimony of an expert witness that the coupons were genuine coupons, but the court refused to receive said testimony or allow it to go to the jury, because the act of the General Assembly of Virginia, approved January 21, 1886, entitled "An act to amend and re-enact section 39 of chapter 167 of the Code of 1873, in relation to rules, pleading, and evidence," now incorporated into and constituting part of section 412, Code of 1887, forbade it; to
23 which ruling of the court the defendant then and there excepted upon the ground that said act is repugnant to section 10, article 1, Constitution of the United States. Petitioner assigns this action of the court as error, as affirmed on appeal.

The Commonwealth then called on the defendant to produce the bonds from which the coupons purported to have been cut. The defendant moved the court to overrule this demand on the ground that the act of the General Assembly, approved January 26, 1886, under which said demand was made, was repugnant to section 10, article 1, of the Constitution of the United States; but the court ruled that said act was valid and sustained the demand, and de-

fendant excepted. This action of the court is assigned as error, as affirmed on appeal.

The defendant thereupon prayed the court to instruct the jury that the production of the bonds from which the coupons in issue were cut was not necessary to prove their genuineness, and that the act of Assembly requiring such production was repugnant to said article of said Constitution; but the court refused this instruction and instructed the jury that said act was valid. Defendant excepted to both rulings and assigns both as error, as affirmed on appeal.

At the trial the defendant proved that the State issued under her funding act of March 30, 1871, many millions of dollars of her bonds, with interest coupons attached, which were to be receivable by her for all taxes due to her, which were payable to bearer, and that all of the coupons were taken from an engraved plate simply and were not signed by any officer or other person.

The defendant prayed the court to instruct the jury as follows:

"If the jury believe from the evidence that the State of Virginia issued her bonds, with tax-receivable interest coupons thereto attached, which coupons were made payable to bearer and were printed from engraved plates and not signed manually by any officer of the State; and if they further believe that the defendant purchased the coupons filed with his plea of tender in the open market in good faith, as and for genuine coupons of said State, then they are instructed that the burden is upon the State to prove said coupons spurious, and that the act of her General Assembly,
24 approved May 12, 1887, entitled 'An act to provide for the recovery, by motion, of taxes and certain debts due the Commonwealth,' which attempts to place upon the defendant the burden of proving them genuine, is repugnant to section 10, article 1, of the Constitution of the United States, and is void;" but the court refused to give this instruction, and the defendant excepted.

This action of the court, which was affirmed in the appellate court, is assigned as error.

The trial resulted in a verdict and judgment for the Commonwealth. Petitioner prayed the supreme court of appeals for a writ of error to this judgment, which was allowed, but at the hearing all the rulings of the lower court were affirmed on the 6th day of December, 1888; all of which will appear by a certified copy of the record presented herewith. Petitioner assigns this action of the supreme court of appeals as error.

Petitioner prays that a writ of error may be awarded him to said judgment of said supreme court of appeals, and that it may be reversed.

PETITIONER,
By his att'y, WM. L. ROYALL.

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John McGahey, plaintiff in error, and The State of Virginia, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the

26 Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventeenth day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Justice Sup. C't U. S.

27 VIRGINIA:

In the clerk's office of the supreme court of Virginia, at Richmond, December 21st, 1888.

I, George K. Taylor, clerk of the supreme court of appeals of Vir-

ginia, at Richmond, do hereby certify that a copy of the within writ is on file in my office.

Given under my hand this 21st December, 1888.

GEO. K. TAYLOR, *Cl'k.*

28 The United States of America to the State of Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein John McGahey is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this seventeenth day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

JOHN M. HARLAN,
Justice Sup. C't U. S.

29 On this 21st day of December, in the year of our Lord one thousand eight hundred and eighty-eight, personally appeared Wm. L. Royall before me, the subscriber, a notary public for the city of Richmond, Virginia, in my said city, and makes oath that he delivered a true copy of the within citation to Fitzhugh Lee, Governor of Virginia, and one to R. A. Ayers, attorney general thereof, in my said city, on the 20th day of December, 1888.

WM. L. ROYALL.

Sworn to and subscribed the 21st December, 1888.

A. B. GUIGON, *N. P.*

VIRGINIA:

In the clerk's office of the supreme court of appeals of Virginia, at Richmond, December 21st, 1888.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within citation is on file in my office.

Given under my hand this 21st December, 1888.

GEO. K. TAYLOR, *Cl'k.*

30 Know all men by these presents that we, James P. Cooper and William L. Royall, are held and firmly bound unto the State of Virginia in the just and full sum of five hundred dollars, to be paid to the said State of Virginia, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be